

Honorable THOMAS W DORE
Chapter 13
Seattle, WA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

BEVERLY JANE CARY,

Debtor.

Chapter 13 Case No. **20-12450 TWD**

Adversary Case No. 22-01000-TWD

BEVERLY JANE CARY,

SECOND AMENDED COMPLAINT:

Plaintiff,

(1) TO DETERMINE NATURE AND EXTENT OF
LIEN, IF ANY AND TO QUIET TITLE;

v.

(2) VIOLATION OF RCW 31.04, *et seq.*, WA
CONSUMER LOAN ACT, WHICH

PATCH SERVICES, LLC d/b/a
NOAH; PATCH HOMES, INC.;
FIRST AMERICAN TITLE
INSURANCE COMPANY
LENDERS ADVANTAGE,

CONSTITUTES A *PER SE* VIOLATION OF THE
WA CONSUMER PROTECTION ACT, RCW 19.8,
et seq.;

Defendants.

(3) WA USURY STATUTE, RCW 19.52, *et seq.*,
WHICH CONSTITUTES A *PER SE* VIOLATION
OF THE WA CONSUMER PROTECTION ACT,
RCW 19.86, *et seq.*

(4) WA CONSUMER PROTECTION ACT, RCW
19.86, *et seq.*;

(5) INTENTIONAL AND NEGLIGENT
MISREPRESENTATION;

(6) WA ESCROW AGENT REGISTRATION ACT,
RCW 18.44, *et seq.*, WHICH CONSTITUTES A
PER SE VIOLATION OF THE WA CONSUMER
PROTECTION ACT, RCW 19.86, *et seq.*;

(7) VIOLATIONS OF THE TRUTH IN LENDING
ACT, 15 U.S.C. § 1601, *et seq.*;

(8) VIOLATIONS OF THE TRUTH IN LENDING
ACTION, 15 U.S.C. § 1639c(e)(3);

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(9) WA CONSUMER PROTECTION ACT, RCW 19.86, *et seq.* RE: UNLAWFUL ARBITRATION CLAUSE;
(10) OBJECTION TO CLAIM 11

COMES NOW Debtor and Plaintiff Beverly Jane Cary to pursue her claims that Defendants' joint and several acts constitute violations of numerous Washington statutes, including the Consumer Loan Act, RCW 31.04, *et seq.* and the Escrow Agent Act, RCW 18.44, *et seq.*, which constitute a *per se* violation of the Washington Consumer Protection Act ("CPA"), RCW 19.86, *et seq.*; stand-alone violations of the Consumer Protection Act, RCW 19.86, *et seq.*; violations of the Usury statute, RCW 19.52, *et seq.*; Intentional and Negligent Misrepresentation; to Quiet Title as against the unlawful lien; violations of the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and form the basis for her objection to claim 11 and avoidance of the PATCH Defendants' Deed of Trust.

I. PARTIES, JURISDICTION AND VENUE

1.1 Defendant PATCH HOMES, INC d/b/a NOAH, referred to herein as ("PATCH") was formed under the laws of the state of Delaware. Defendant PATCH was not registered with the Washington Secretary of State as a foreign corporation until **September 5, 2019**. Its nature of business was listed as "Home Equity". It became inactive on January 5, 2021 due to not filing the requisite documentation with the Washington Secretary of State. Defendant PATCH is not licensed with the Washington Department of Financial Institutions ("DFI") as a consumer lender, as required by RCW 31.04.025(1); 31.04.035(1). Defendant PATCH did register with the Washington Department of Revenue but there is no records

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1 indicating it ever paid taxes for conducting business in the State of Washington.

2 1.2 Defendant PATCH SERVICES, LLC (“Patch Services”) is a Delaware limited
3 liability company that was registered with the Washington Secretary of State as a foreign LLC
4 on March 9, 2021. Its nature of business is listed as “Financial Servicers Provider”. Defendant
5 Patch Services is not licensed by Washington DFI as a consumer lender or loan servicer.
6

7 Defendants PATCH and Patch Services appear to interchangeably use their names in
8 the subject loan documents referring to themselves or being referred to as either “lender” or
9 “investor”.

10 1.3 Defendant FIRST AMERICAN TITLE INSURANCE COMPANY LENDERS
11 ADVANTAGE (“Lenders Advantage”) appears to be licensed in Washington state with the
12 Office of the Insurance Commissioner using only the name FIRST AMERICAN TITLE
13 COMPANY. It acted as an escrow agent in connection with the loan closing of the subject
14 transaction. Ms. Cary will be investigating its licensing in Washington state to make certain
15 that it is compliant such that it could act as an escrow agent in Washington. In connection with
16 that closing, Defendant Lenders Advantage required Beverly to sign an Escrow Agreement
17 which includes a mandatory arbitration clause. Mandatory arbitration clauses are expressly
18 prohibited under federal law in connection with residential mortgage loans which are the
19 principal dwelling of the borrower. Other entities in the making of the loan, such as escrow
20 companies, cannot assist lenders in trying to avoid that requirement by including a mandatory
21 arbitration clause in other contractual terms.
22
23

24 1.4 Jurisdiction. This adversary proceeding is commenced pursuant to BR 7001 *et*
25 *seq* and 11 U.S.C. §§ 502 (b)(1) and 506 (d). Although an adversary proceeding brought as an
26 objection to claim with a counterclaim is a core proceeding under 28 U.S.C. §§ 157(b)(2)(B),
27

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1 (K) and/or (O) with non-core matters. Since the issues raised in this adversary proceeding
2 include counterclaims that go beyond resolution of the claim itself, this matter is a non-core
3 claim that lies beyond the scope of the creditor's proof of claim. Thus, outside of the
4 bankruptcy context, many of the claims would not otherwise *require* adjudication in an Article
5 III court. *Stern v. Marshall*, 564 U.S. 462, 496–98 (2011) (finding that a bankruptcy court had
6 no constitutional power to evaluate the debtor's common law tort counterclaims because such
7 claims were beyond the scope of the creditor's proof of claim and were claims of a nature that
8 required an Article III court's adjudication).

10 1.5. Jurisdiction. The Plaintiff here is also requesting a jury trial and does not
11 consent to have the jury matter heard in bankruptcy court and does not waive her rights.
12 *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41 (1989).

14 1.6 Venue. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

15 II. FACTS

16 2.1 Beverly is a single woman who has lived in King County for most of her life.
17 She has one daughter, Alycia, who is currently 34 years old. Alycia's son Kameron is now 7
18 years old and been diagnosed as autistic. The two of them have lived with Beverly since 2015.

19 2.2 She worked for Delta Airlines as flight attendant for 31 years and she retired on
20 December 1, 2001, after receiving a payout offer from Delta following the September 11
21 crashes. She received a monthly pension payment from Delta until she reached the age of 62
22 when it was reduced due to her beginning to receive Social Security. She still receives some of
23 her pension income along with her Social Security, but her income is not substantial. Between
24 the ages of 52 and 62, she also worked jobs at Home Depot, Chicos and the like to earn some
25 extra money and increase future Social Security earnings.
26
27

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1 2.3 In 1998, Beverly had a custom home built for her in Maple Valley, which she
2 sold in 2006 to downsize. She made a profit of approximately \$210,000.00. She decided to rent
3 for a while and in 2007, she purchased her current residence, located at 27834 31st Place South,
4 Auburn, WA 98001-1819 ("Property") by putting down \$150,000.00. She obtained a traditional
5 mortgage to make the purchase and made the monthly payments while living in it until
6 September 2009, when she moved to Florida to be near her closest friend and take a break from
7 the Pacific Northwest. She could not sell the Property at that time without taking a significant
8 loss due to the collapsed housing market. Instead, she rented it out and used those funds to
9 make the mortgage payments.
10

11 2.4 Beverly returned to Washington in 2012 because her daughter was talking about
12 getting married and it was time to come home. She rented a place while continuing to rent out
13 the Property until August 2015. In September 2015, Alycia, Kameron and Alycia's husband
14 Rick moved in. Later in 2015, Beverly refinanced the Property in order to reduce her interest
15 rate from 6.35% to 4.56%. This resulted in a new mortgage with a balance of \$110,000.00 and
16 a monthly payment of \$879.00.
17

18 2.5 By 2018, Beverly had very significant credit card debt and needed to get it under
19 control, so she refinanced the Property again and ended up with a payment of \$1,150.00 per
20 month after she paid off approximately \$50,000.00 in other debt.
21

22 2.6 The reason Beverly was struggling financially and incurring significant credit
23 card debt is because of unlawful charges incurred in her name by her daughter Alycia. Even
24 after the 2018 refinance, her credit card debt and balance on her car loan was approximately
25 \$62,000.00, some of which was attributable to fraudulent charges by Alycia on her credit cards
26 and from Alycia stealing her debit card and making unauthorized withdrawals.
27

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1 2.7 Alycia's drug problems began when she fell at work and seriously injured her
2 back. She had unsuccessful back surgeries, including a failed spinal fusion in 2013. As a result,
3 she became addicted to pain killers, which began to destroy her life. Beverly did not realize the
4 problems Alycia was having with drugs until she moved into her home in September 2015.
5 Once Alycia and her husband moved in with her, they began borrowing money from her for
6 legitimate purposes, but it also became apparent that Alycia was also using the money for drugs
7 as well. Beverly found herself devastated by her daughter's addiction and her efforts to deal
8 with it, but also the financial damage Alycia's actions continued to cause Beverly.

10 2.8 Compounding Beverly's stress was the fact that Alycia went to rehab once and a
11 detox place three times beginning in 2020 and nothing worked to stop her addiction. Alycia
12 and Rick separated about a year after they moved in and they were fighting over custody of her
13 grandson Kameron. Beverly helps care for Kameron and he has some serious problems. He was
14 born premature with lung damage and has been diagnosed as autistic. All of this just makes the
15 pressures on Beverly almost unbearable.

17 2.9 Beverly's financial problems became exacerbated as Alycia continued to use her
18 credit and debit cards without permission and in spite of Beverly's efforts to prevent her from
19 having access to them. She also stole checks and gained access to Beverly's VENMO account
20 to steal more money. Alycia kept running up very significant debt in Beverly's name again and
21 again. While Beverly was stressing out in 2019 about how she would ever be able to pay off the
22 debt and knowing that it was unlikely she could obtain a traditional refinance, she was attracted
23 by a mailing she received from PATCH Defendants. The appeal of the advertisement from
24 Defendant PATCH was that the loan could close in two to three weeks with the promise of
25 providing a loan to people who could not get traditional loans. Because Beverly was desperate
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27

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1 for a loan that would relieve the financial pressures she was facing, a quick closing without
2 traditional underwriting was very attractive.

3 2.10 Alycia became aware that Beverly was considering entering into the loan with
4 PATCH Defendants and was pressured her to get it. She was desperate and believed that no
5 other options that included saving her home existed. She was also about to turn 70 and
6 believed she wouldn't be able to work her way out of her desperate financial situation.
7 Defendant PATCH offered very slick advertising and enticed Beverly into reaching out. Bev
8 called the telephone number on the Defendant PATCH mailer but does not specifically
9 remember with whom she spoke. The PATCH Defendants offered her what she interpreted as a
10 loan since they were going to give her money to pay off her unsecured debt and she would have
11 to repay it with interest at a later date. This was no ordinary loan, however, and Beverly did not
12 receive any disclosures in advance of entering into the loan which she could assess or analyze
13 in order to understand the loan terms.
14

15 2.11 While the PATCH Defendants entitles and describes their contract as a
16 "Purchase Option Agreement" and repeatedly disavows that it is a loan, the documents
17 provided by the escrow company, Defendant Lenders Advantage, to Beverly for signing
18 referred to the documents as a "loan" and the proceeds as "Loan Amount" approximately 118
19 times. In numerous places throughout the documents drafted and presented to Beverly for
20 signature by Defendant PATCH, there are references to amounts financed, fees and charges
21 that Beverly must re-pay or pay outright that are solely for the benefit of the PATCH
22 Defendants and to increase its profit when it obtains repayment of the amounts advanced to
23 Beverly, as well as its profit from the transaction.
24

25 2.12 PATCH Defendants did not suggest that Beverly should look at other options to
26
27

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1 deal with her credit cards including credit counseling, seeking a further traditional refinance,
2 credit counseling, a reverse mortgage, or to discuss her situation with a bankruptcy attorney.
3 While PATCH is not obligated to have these discussions, it is important in this instance since
4 their product was being represented as not a loan at an effort in inducing her to choose it,
5 instead of the other options. In fact, Beverly does not recall any of the discussions she had with
6 PATCH Defendants wherein anyone told her she had the right to have the loan documents
7 reviewed by an attorney. She has now been made aware that the documents she signed
8 contained that language, but she has no memory of seeing it.
9

10 2.13 Most importantly, Beverly did NOT receive the loan disclosures required under
11 federal and state lending laws in advance of the loan signing. Instead, she was provided with
12 alleged summaries of the documentation that no layperson would ever be able to actually
13 understand and certainly no layperson would ever be able to understand the true cost associated
14 with the making of this loan, nor of the risk of loss of homeownership that is very real given the
15 outrageous terms. 12 C.F.R. § 1024.2(b) defines a “federally regulated mortgage loan” as
16 follows:
17

18 Federally related mortgage loan means:

- 19 (1) Any loan (other than temporary financing, such as a construction loan):
20 (i) That is secured by a first or subordinate lien on residential real property,
21 including a refinancing of any secured loan on residential real property, upon
22 which there is either:
23 (A) Located or, following settlement, will be constructed using proceeds of the
24 loan, a structure or structures designed principally for occupancy of from one to
25 four families (including individual units of condominiums and cooperatives and
26 including any related interests, such as a share in the cooperative or right to
27 occupancy of the unit);

....

12 C.F.R. § 1024.2(b). Ms. Cary’s loan meets that definition.

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1 2.14 Under federal law, creditors may not generally exclude charges from the
2 disclosed finance charge that are payable by the consumer incident to the extension of credit as
3 required by 15 U.S.C. § 1605 and Regulation Z § 1026.4. If the creditor fails to include such a
4 charge, it improperly discloses the finance charge in violation of 15 U.S.C. § 1638(a)(3) and
5 Regulation Z § 1026.18(d). If the PATCH Defendants had actually calculated the annual
6 percentage rate (APR) and disclosed it in advance of the making of the loan, as required by the
7 Truth in Lending Act, the rate would have been based upon improperly calculated and
8 undisclosed finance charges and an overstated amount financed in violation of 15 U.S.C. §
9 1606, Regulation Z § 1026.22. A creditor also unlawfully understates the APR in violation of
10 15 U.S.C. § 1638(a)(4) and Regulation Z § 1026.18(e). Regulation Z defines the term
11 “finance charge” as “the cost of consumer credit.” 12 CFR § 1026.4 (2004).
12

13 2.15 The PATCH Defendants did not comply at all with any of the TILA provisions
14 regarding advance disclosure of the loan terms in advance of the loan signing. This also
15 violated the Washington Consumer Loan Act which incorporated TILA requirements into its
16 language.
17

18 2.16 The PATCH Defendants are covered by TILA loan disclosure requirements
19 because they make more than five (5) loans per year. The PATCH Defendants were required to
20 provide Ms. Cary with the Loan Estimate within three business days of the receipt of the
21 consumer’s loan application. 12 C.F.R. § 1026.19(e)(1). That Estimate must contain a good
22 faith estimate of credit costs and transaction terms. If any information necessary for an accurate
23 disclosure is unknown, the creditor must make the disclosure based on the best information
24 reasonably available at the time the disclosure is provided to the consumer and use due
25 diligence in obtaining the information. 12 C.F.R. § 1026.19(e)(1)(i); Comment 19(e)(1)(i)-1.
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1 The Estimate must be in writing and contain the information prescribed in § 1026.37. The
2 creditor must disclose only the specific information set forth in 12 C.F.R. § 1026.37(a) through
3 (n), as shown in the CFPB's form in appendix H-2, consistent with 12 C.F.R. § 1026.37(o).

4 2.17 Delivery must satisfy the timing and method of delivery requirements. The
5 creditor is responsible for delivering the Loan Estimate or placing it in the mail no later than
6 the third business day after receiving the application. 12 C.F.R. § 1026.19(e)(1)(iii)). The
7 PATCH Defendants were required to use form H-24, promulgated by the CFPB. 12 C.F.R. §
8 1026.37(o)(3)(i). PATCH Defendants did not make any disclosures within three business days
9 of Ms. Cary's application or at all, nor did they use form H-24.

10 2.18 Rather than providing Beverly with standard loan terms which complied with
11 federal and state lending laws, The PATCH Defendants demanded that she re-pay the loan with
12 a percentage of her home's equity through a complex labyrinth of loan terms that no average
13 consumer and even most experienced lawyers would be able to follow and understand, let alone
14 calculate the interest rate, repayment requirements, etc. The Agreement also included an initial
15 reduction in the alleged value of the Property and allowed Defendant PATCH to exclusively
16 control the process of determining the value of the Property throughout the history of the
17 transaction.

18 2.19 Further, the unlawful loan provided by the PATCH Defendants included a
19 requirement, not disclosed in advance and only provided at the loan signing, of a **non-**
20 **revocable** Power of Attorney ("POA") giving the PATCH Defendants the power to control the
21 entirety of the contractual relationship and stealing from Beverly any control she might have
22 over her home, the Property. The very broad powers in the POA includes: (1) allowing
23 Defendant PATCH to force the sale of Beverly's home in the event she files a bankruptcy and
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1 if Beverly fails to “maintain”, “preserve” or “repair” the Property according to the unilateral
2 discretion of Defendant PATCH. The definition of “maintain” and “repair” includes such
3 generic terms as keeping the Property in “good condition”. Again, allowing Defendant PATCH
4 to decide for itself and without giving Beverly any ability to challenge its decisions, whether
5 she is or is not keeping the Property in “good condition”, which then permits Defendant
6 PATCH to force the sale of her home and repeat its very significant profits that it disavows is
7 interest. Beverly maintains that the amounts over and above what was loaned to her is interest
8 that Defendants seek to mischaracterize in an effort at avoiding federal and state lending laws.

10 2.20 Believing there were no other options and facing immense financial pressure,
11 Beverly signed the PATCH Defendants’ documents on or about **July 3, 2019**, approximately
12 two months **before** Defendant PATCH had registered to conduct any business in the State of
13 Washington. And as noted above, Defendant PATCH was not then and never has been licensed
14 to engage in consumer lending and to take a lien interest on Beverly’s residence in the State of
15 Washington. That lien is evidenced by a Deed of Trust, which is consistent with Washington’s
16 requirements that any encumbrance be evidenced by a deed. RCW 64.04.010. The PATCH
17 Defendants’ Deed of Trust is most certainly an “encumbrance”. Further, a deed of trust in
18 Washington is treated as a mortgage on real property. RCW 61.24.020. This is irrespective of
19 the PATCH Defendants efforts to characterize the transaction as anything other than a
20 mortgage loan. *See also*, RCW 61.24.005(2) which defines “beneficiary” in a deed of trust as
21 “the holder of the instrument or document evidencing the obligations secured by the deed of
22 trust”. Defendant PATCH has identified itself as the “beneficiary” in the Deed of Trust it
23 required Beverly to sign.

26 2.21 Beverly failed to understand the core terms of the loan, which is understandable
27

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1 when one tries to read the complex and Byzantine terms included in the loan documents, such
2 as Defendant PATCH's claim of a right to force the sale of her home prior to the end of the 10
3 year term of the loan; exactly how the repayment amount will be calculated; how much Beverly
4 would owe six (6) months after the documents were signed; how much would be owed after
5 twelve (12) months; how much would be owed after three (3) years, and so on. In return for
6 the approximately \$62,000 that Defendant PATCH paid out on the loan to Beverly and on her
7 behalf for her debts, Beverly had no idea that it would demand in excess of \$126,000.00 less
8 than three years later, as it has done in her bankruptcy case.

10 2.22 Among the other absurd terms of the unlawful loan made by the PATCH
11 Defendants are the following, including terms of the Real Estate Option Agreement, Sections
12 5.3, 6.1, 6.2, 7 and 19, including subsections and in particular, Section 20, which requires
13 Beverly to indemnify Defendant PATCH for any potential claims while there is no obligation
14 from Defendant PATCH to Beverly:

16 a. It allows the "Investor", Defendant PATCH, to order an appraisal
17 without Beverly's consent and to charge her for it;

18 b. If Beverly disagrees with the appraised amount, she has to pay for
19 another one herself and if she and Defendant PATCH cannot reach an agreement, she is
20 required to arbitrate the issue. As noted above, mandatory arbitration in connection with the
21 making of a residential mortgage loan which is Beverly's principal dwelling is illegal under
22 federal law;

23 c. The Owner, Beverly, will have a different required "payout" amount
24 depending upon what sort of transaction she enters into in the future to either refinance the
25 Property, sell it to a third party, sell it to Defendant PATCH, etc. These are the sort of uncertain
26 and differing repayment terms which violate federal and state lending laws;

27 d. Specific assertions of what Beverly has to repay Defendant PATCH
while simultaneously contending that the transaction is not a loan and that interest is not being
charged.

2.23 In spite of the PATCH Defendants' repeated assertions throughout the loan
documents that the transaction is not a loan, the accompanying Deed of Trust confirms that a

1 loan is precisely the nature of the transaction in multiple places Paragraph 7 begins with the
2 following language:

3 Default and Foreclosure and Power of Sale.

4 Upon default by Trustor in the performance of or upon breach by Trustor of any
5 of the rights and obligations that are secured by this Security Instrument as
6 specified above, **Beneficiary may declare all sums secured by this Security**
7 **Instrument immediately due and payable and may invoke the power of sale**
8 **and any other remedies permitted by applicable law, including an action in**
9 **any court of competent jurisdiction to foreclose this Security Instrument as a**
10 **deed of trust or mortgage.**

11 Deed of Trust, Paragraph 7 (emphasis added). The Trustor is Ms. Cary and the Beneficiary is
12 Defendant PATCH.

13 2.24 The Deed of Trust at Paragraph 10 also gives the Trustee powers that only the
14 Beneficiary may demand it exercise, in contravention of its duties under Washington law to
15 both the “borrower” (in this instance, the borrower is identified as the “Trustor”) and the
16 “beneficiary”. RCW 61.24.010(4).

17 2.25 At Paragraph 12, the exclusive duty to pay for the services of the Trustee, which
18 only Defendant PATCH controls and directs, is to be borne by Trustor, Ms. Cary. This too is a
19 blatant violation of Washington law and further evidences just how much the entirety of the
20 subject loan transaction is one-sided and designed to guarantee that Ms. Cary ends up losing
21 her home and all of the equity in it to Defendant PATCH.

22 2.26 The Deed of Trust also purports to be a separate lien on personal property that is
23 part of the Property, including fixtures, under UCC Article 9. This assertion is absurd and
24 contradictory to the provisions of Washington law that makes clear that a deed of trust secures
25 real property and only real property. Further, “fixtures” are not separate from structures on and
26 part of real property.
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1 2.27 Ms. Cary is not listing all of the onerous and unlawful terms of the loan
2 agreement herein, but she does assert that every part of the loan documentation violates federal
3 and state lending laws, as well as Washington real property law. She also did not realize she
4 had agreed to a mandatory arbitration clause until the loan documents were reviewed with her
5 attorneys. Had she not taken action to reject the loan terms and rescind the loan entirely under
6 TILA with the assistance of her attorneys, she would have been bound by all of the loan terms,
7 including the unlawful mandatory arbitration clause.
8

9 2.28 The PATCH Defendants may have further violated TILA and state law when it
10 made the unilateral decision to have Ms. Cary's escrow handled by an escrow agent, Defendant
11 Lenders Advantage, which may not be licensed in Washington state in a manner that allowed it to
12 act as an escrow agent in Washington state. The escrow paperwork indicated that Defendant
13 Lenders Advantage was operating under a California license – not a Washington license.
14

15 2.29 Defendant Lenders Advantage also included a mandatory arbitration agreement
16 in its escrow paperwork which is prohibited by TILA. That agreement purports to require
17 arbitration of any and all disputes relating to the loan terms. By doing so, Defendant Lenders
18 Advantage was acting in collusion with the PATCH Defendants to further violate TILA which
19 prohibits the use of a mandatory arbitration agreement in connection with a federally regulated
20 mortgage loan. 15 U.S.C. § 1639c(e)(3). The PATCH Defendants cannot use a third party to
21 impose terms upon a borrower that are prohibited by federal law.
22

23 2.30 As evidenced by the fact that Beverly had to file a Chapter 13 bankruptcy,
24 obtaining a loan from Defendant PATCH did not solve Beverly's financial problems. She
25 found herself back in financial trouble again due to Alycia's continued addiction problems. She
26 was required to file this bankruptcy to get some relief, but that was how she discovered the
27

1 horrific nature of the loan she obtained from Defendant PATCH when she had to try to figure
2 out how much she owed on the loan after a short period of time.

3 2.31 Upon request by Beverly's bankruptcy counsel, Defendant PATCH provided a
4 "Final Payoff Statement" in the amount of \$126,554.00 dated March 5, 2021. Defendant
5 PATCH later filed a Proof of Claim in the amount of \$122,500.00 on July 5, 2021. Apparently,
6 Defendant PATCH cannot even calculate its own payoff calculations using the formula it
7 created. But these amounts make it very clear that the transaction is a loan and a very expensive
8 one at that. Defendant PATCH lent Ms. Cary \$64,000.00 on or about July 13, 2019 and less
9 than two years later, it was demanding almost double that amount in repayment. That
10 constitutes an interest rate of almost 50% per annum.

11
12 2.32 Defendant PATCH has even gone so far as to try to repeatedly oppose Beverly's
13 attempts to get lawyers hired to represent her in challenging the validity of this loan agreement,
14 telling this Court that Beverly doesn't have a right to challenge its unlicensed loan product and
15 making threats about incurring legal fees in connection with its efforts to prevent her from
16 obtaining recovery that Defendant PATCH maintains it can charge her under the loan contract.
17 In other words, Defendant PATCH is using its high-priced Silicon Valley lawyers to waste this
18 Court's time by making frivolous arguments and legally unsupported opposition to Ms. Cary's
19 right to challenge the terms of this unlawful loan while preparing to charge her for those
20 efforts. This is yet another example of the horrific and onerous nature of the contractual terms
21 of the unlawful loan provided to Beverly by Defendant PATCH, and the predatory nature of
22 Defendant PATCH and all of its affiliated entities, as well as the members of the Defendants'
23 LLCs.

24 2.33 Defendant Lenders Advantage has acted in collusion with the other Defendants
25
26
27

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1 to facilitate this unlawful loan by providing escrow services in Washington state when it is not
2 licensed to do so, and by insisting that Ms. Cary sign an escrow agreement that includes a
3 mandatory arbitration agreement, in direct contravention of the federal lending laws.

4 2.34 Beverly has incurred damages and been injured in amounts to be determined
5 later by the trier of fact but which include at this stage illegal and unlawful demands for interest
6 and fees which Defendant PATCH is demanding in violation of Washington law. As outlined
7 below, a loan made by an unlicensed lender which is secured by a residence does not allow the
8 lender to recovery **any fees or interest** on the loan. RCW 31.04.035(2).
9

10 **III. CAUSES OF ACTION**

11 First Cause of Action 12 Quiet Title and To Determine 13 The Nature and Extent of Any Lien 14 as Against Defendants PATCH and Patch Homes

15 3.1 Ms. Cary incorporates herein by reference as though fully set forth at length
16 each and every allegation and statement contained in the paragraphs above, inclusive, of the
17 Factual Allegations above.

18 3.2 Under Washington law, RCW 7.28.010, Ms. Cary has the right to bring this
19 action in order to remove the cloud on title in the form of an unlawful mortgage loan secured
20 by a Deed of Trust that has been generated, created and recorded against the subject real
21 Property by Defendants PATCH and Patch Homes, in an attempt to gain for in a monetary
22 recovery against the Property to which it is not entitled, as it is above and beyond any right it
23 may have for making an unlawful loan.
24

25 Second Cause of Action 26 Violation of the Consumer Loan Act, which is a 27 Per Se Violation of the Consumer Protection Act as Against Defendants PATCH and Patch Homes

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1 3.3 Ms. Cary incorporates herein by reference as though fully set forth at length
2 each and every allegation and statement contained in all of the Sections above, inclusive, and
3 the Facts Statements, inclusive, and Paragraphs 3.1 through 3.2 of the Causes of Action above.
4

5 3.4 The Consumer Loan Act, RCW 31.04.035, **requires** any person or entity to be
6 licensed under the CLA if they obtain a lien on a borrower's residence. Defendants PATCH
7 and Patch Homes do not have a license to make a consumer loan and the loan transaction at
8 issue is a consumer loan secured by Ms. Cary's residence. A violation of RCW 31.04.035 is a
9 *per se* violation of the Consumer Protection Act and as such, Defendants PATCH and Patch
10 Homes are liable to Ms. Cary for their violations of the law, as more particularly described
11 above in Facts Section.
12

13 3.5 A *per se* violation of the CPA under the CLA, RCW 31.04.208, meets the
14 requirements of (1) unfair or deceptive act, (2) in trade or commerce, and (3) affecting the
15 public interest. *Id.* As identified above, Ms. Cary has suffered injuries and incurred damages as
16 a direct result of the actions of Defendants PATCH and Patch Homes in connection with their
17 violations of the CLA. Therefore, she is entitled to recover damages, treble damages and
18 reasonable attorney fees and costs pursuant to the statute, as well as permanent injunctive relief
19 to make certain that other Washington consumers are not similarly harmed by the actions of
20 Defendants PATCH and Patch Homes. In addition, Defendants PATCH and Patch Homes may
21 not collect **any** interest on the loan nor any fees, and if any of these amounts have already been
22 paid by Ms. Cary, either through the loan terms or other means, Defendants PATCH and Patch
23 Homes must refund those amounts to her under Washington law.
24
25

26 Third Cause of Action
27 Violation of the Washington State Usury Statute

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Which is a *Per Se* Violation of the CPA
as Against Defendants PATCH and Patch Homes

3.6 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.5 of the Causes of Action above.

3.7 Under RCW 19.52.020(1),

(1) Except as provided in subsection (4) of this section, any rate of interest shall be legal so long as the rate of interest does not exceed the higher of: (a) Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate. No person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater interest for the loan or forbearance of any money, goods, or things in action.

RCW 19.52.020(1).

3.8 Given the current interest rate published by the Board of Governors of the Federal Reserve System is extremely low, the effective cap on interest rates in Washington state is twelve percent (12%) per annum. The loan made to Beverly by Defendants PATCH and Patch Homes carries an interest rate demonstrably in excess of 12 percent per annum based upon the amounts demanded by the PATCH Defendants in her Chapter 13 bankruptcy.

3.9 RCW 19.52.030 also provides that:

(1) If a greater rate of interest than is allowed by statute shall be contracted for or received or reserved, the contract shall be usurious, but shall not, therefore, be void. If in any action on such contract proof be made that greater rate of interest has been directly or indirectly contracted for or taken or reserved, the creditor shall only be entitled to the principal, less the amount of interest accruing thereon

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1 at the rate contracted for; and if interest shall have been paid, the creditor shall
2 only be entitled to the principal less twice the amount of the interest paid, and less
3 the amount of all accrued and unpaid interest; and the debtor shall be entitled to
4 costs and reasonable attorneys' fees plus the amount by which the amount the
debtor has paid under the contract exceeds the amount to which the creditor is
entitled . . .

5 RCW 19.52.030(1).

6 3.10 Consistent with the Usury statute, Ms. Cary is entitled to recover **twice** the
7 interest that she has already paid on the loan, which in this case may be that amount which the
8 PATCH Defendants are demanding in the bankruptcy has already “accrued” and should be
9 deducted from the equity in her home. The PATCH Defendants is only entitled to recover the
10 principal amount provided to Ms. Cary, less any interest which has been accrued and to recover
11 her reasonable attorneys’ fees and costs incurred to date. This will also include the costs she
12 was charged in connection with the making of the loan, including the escrow and other fees.
13

14 3.11 The Usury statute also allows for a *per se* CPA violation in the event of a
15 violation of the statute. RCW 19.52.036. A violation of the statute meets the unfair or deceptive
16 and trade or commerce elements of the CPA.
17

18 3.12 Ms. Cary can prove the “public interest” element of a CPA claim which requires
19 proof that the PATCH Defendants “had the capacity to injure other persons” and “has the
20 capacity to injure other persons” because it continues in its business as of the writing of this
21 Amended Complaint. This is also evidenced by the actions of the PATCH Defendants in Ms.
22 Cary’s bankruptcy wherein they tried to collect a usurious interest amount by filing a Proof of
23 Claim for the same and because of its actions to try to prevent Ms. Cary from being able to hire
24 lawyers to represent her.
25

26 3.13 Ms. Cary, acting through her attorneys, is also aware that the PATCH
27

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1 Defendants continue to do business by advertising online through the Noah website offering the
2 same products that she was conned into signing.

3 3.14 Ms. Cary has suffered injuries and incurred damages as a direct result of the
4 actions of Defendants PATCH and Patch Homes in connection with their violations of the
5 Washington usury statute. Therefore, she is entitled to recover damages, treble damages and
6 reasonable attorney fees and costs pursuant to the statute, as well as permanent injunctive relief
7 to make certain that other Washington consumers are not similarly harmed by their actions. In
8 addition, the PATCH Defendants may not collect **any** interest on the loan nor any fees, and if
9 any of these amounts have already been paid by Ms. Cary, either through the loan terms or
10 other means, the PATCH Defendants must refund double those amounts to her under
11 Washington law.
12

13
14 Fourth Cause of Action
15 Violation of the Consumer Protection Act
 as Against Defendants PATCH and Patch Homes

16 3.15 Ms. Cary incorporates herein by reference as though fully set forth at length
17 each and every allegation and statement contained in all of the Sections above, including the
18 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.14 of
19 the Causes of Action above.
20

21 3.16 The PATCH Defendants have made numerous misrepresentations about the
22 terms of the contract and whether or not it is a loan, whether the terms of the loan are compliant
23 with Washington state law (they are not) and whether the loan can even be made under
24 Washington law, as well as the amounts owing under the loan and whether PATCH Defendants
25 can charge her interest and any fees on the loan, as more particularly described above. These
26 misrepresentations were unfair and deceptive, and they occurred in trade or commerce, which
27

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1 is PATCH Defendants' business model and purpose.

2 3.17 Ms. Cary maintains, based upon information and belief, that the Defendants
3 have engaged in making similar misrepresentations to other Washington homeowners and/or
4 that it had the capacity to do so previously and/or has the capacity to do so in the future.

5 3.18 All of Ms. Cary's injuries and damages were caused by the PATCH Defendants
6 and they are directly responsible for those injuries and damages.

7
8 Fifth Cause of Action
9 Intentional and Negligent Misrepresentation
10 as Against PATCH Defendants

11 3.19 Ms. Cary incorporates herein by reference as though fully set forth at length
12 each and every allegation and statement contained in all of the Sections above, including the
13 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.18 of
14 the Causes of Action above.

15 3.20 Ms. Cary maintains that there were numerous intentional and/or negligent
16 misrepresentations made to her by the PATCH Defendants about the terms of the loan, by and
17 through their agents, as described more particularly hereinabove.

18 3.21 Ms. Cary was particularly harmed by the specific misrepresentations made by
19 the representatives of PATCH Defendants about the terms of the loan, and intentional
20 omissions about the loan terms prior to signing since they did not provide her with any
21 information about the loan terms in advance, as described more particularly in the Facts section
22 above. Included in the misrepresentations were assertions regarding the fact that it is a loan, in
23 spite of PATCH Defendants' assertions to the contrary, the correct amount owing at any given
24 time after the loan is made, the amounts that may be demanded in connection with the loan
25 under Washington law, and the rights to completely control all of the terms of the contract and
26
27

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whether or not Beverly is complying with the loan terms.

3.22 As a result of the actions of the PATCH Defendants, which is also referenced in the loan documents, Beverly has been harassed for monies that she does not owe and now faces the risk of losing her home and all of her equity therein.

Sixth Cause of Action
Violations of the Escrow Registration Agent Act, RCW 18.44, et seq.
Which Constitutes A Violation of the CPA as Against
Defendant First American Title Insurance Company Lenders Advantage

3.23 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.22 of the Causes of Action above.

3.24 RCW 18.44.011(8) defines who may act as an escrow agent under Washington law:

"Escrow agent" means any person engaged in the business of performing for compensation the duties of the third person referred to in subsection (7) of this section.

RCW 18.44.011(8).

3.25 RCW 18.44.011(7) describes the business practices which constitute an "escrow" which is undertaken by an "escrow agent":

"Escrow" means **any transaction**, except the acts of a qualified intermediary in facilitating an exchange under section 1031 of the internal revenue code, **wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he or she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.** "Escrow" includes the collection and processing of payments

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1 and the performance of related services by a third party on seller-financed loans
2 secured by a lien on real or personal property but excludes vessel transfers.

3 RCW 18.44.011(7). Emphasis added.

4 3.26 Defendant Lenders Advantage is an “escrow agent” as defined by RCW
5 18.44.011(8) and it performed the acts described in RCW 18.44.011(7) in connection with
6 providing escrow services to Ms. Cary and the PATCH Defendants relating to the loan that is
7 the subject of this litigation.

8 3.27 Violations of the Escrow Agent Registration Act, RCW 18.44.301 include the
9 following “Prohibited Practices”:

10 It is a violation of this chapter for any **escrow agent**, controlling person,
11 officer, designated escrow officer, independent contractor, employee of an escrow
12 business, or other person subject to this chapter to:

13 (1) Directly or indirectly employ any scheme, device, or artifice to defraud
14 or **mislead borrowers or lenders** or to defraud any person;

15 (2) **Directly or indirectly engage in any unfair or deceptive practice**
16 **toward any person;**

17

18 (4) **Knowingly make, publish, or disseminate any false, deceptive, or**
19 **misleading information in the conduct of the business of escrow, or relative to the**
20 **business of escrow or relative to any person engaged therein;**

21

22 (11) **Fail to comply with any requirement of any applicable federal or**
23 **state act including the truth in lending act, 15 U.S.C. Sec. 1601 et seq. and**
24 **Regulation Z, 12 C.F.R. Sec. 226;** the real estate settlement procedures act, 12
25 U.S.C. Sec. 2601 et seq. and Regulation X, 24 C.F.R. Sec. 3500; the equal credit
26 opportunity act, 15 U.S.C. Sec. 1691 et seq. and Regulation B, Sec. 202.9, 202.11,
27 and 202.12; Title V, Subtitle A of the financial modernization act of 1999 (known
as the Gramm-Leach-Bliley act), 12 U.S.C. Secs. 6801-6809; the federal trade
commission's privacy rules, 16 C.F.R. Secs. 313-314, mandated by the Gramm-
Leach-Bliley act; as these acts existed on January 1, 2007, or such subsequent
date as may be provided by the department by rule, or any other applicable
escrow activities covered by the acts;

....

RCW 18.44.301(1), (2), (4), (11). Emphasis added.

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3.28 Ms. Cary maintains that Defendant Lenders Advantage in actions more particularly described above which constituted violations of the Prohibited Practices, RCW 18.44.301(1), (2), (4) and (11) by engaging in a “scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person” (1); by “directly or indirectly engage in any unfair or deceptive practice toward any person” (2); knowingly make, publish, or disseminate any false, deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein (4); and fail to comply with any requirement of any applicable federal or state act including the truth in lending act, 15 U.S.C. Sec. 1601 et seq. and Regulation Z, 12 C.F.R. Sec. 226 (11) when it consummated an obviously unlawful loan that included paperwork which expressly disavowed being a loan and which obviously violated TILA in numerous ways, including the fact that none of the documents required by TILA were included in the loan documents.

Seventh Cause of Action
Violations of the Truth in Lending Act, 15 U.S.C. § 1206, et seq.
Against PATCH Defendants

3.29 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.28 of the Causes of Action above.

3.30 The PATCH Defendants are required by TILA to make numerous loan disclosure because they make more than five (5) loans per year and because the loan met the definition of a “federally related mortgage loan”, which included:

- (1) Any loan (other than temporary financing, such as a construction loan):
- (i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property,

1 upon which there is either:

2 (A) Located or, following settlement, will be constructed using
3 proceeds of the loan, a structure or structures designed principally for occupancy
4 of from one to four families (including individual units of condominiums and
cooperatives and including any related interests, such as a share in the cooperative
or right to occupancy of the unit);

5

6 3.31 For that reason, the PATCH Defendants were required to provide Ms. Cary with
7 a Loan Estimate within three business days of the receipt of the consumer's loan application.
8 12 C.F.R. § 1026.19(e)(1). It was required to contain a good faith estimate of credit costs and
9 transaction terms, based upon the best information reasonably available at the time the
10 disclosure is provided to the consumer and use due diligence in obtaining the information. 12
11 C.F.R. § 1026.19(e)(1)(i); Comment 19(e)(1)(i)-1). The Estimate was required to be in writing
12 and contain the information prescribed in 12 C.F.R. § 1026.37. The creditor must disclose only
13 the specific information set forth in 12 C.F.R. § 1026.37(a) through (n), as shown in the
14 CFPB's form in appendix H-2, consistent with 12 C.F.R. § 1026.37(o).

15
16 3.32 The creditor is responsible under TILA for delivering the Loan Estimate or
17 placing it in the mail no later than the third business day after receiving the application. 12
18 C.F.R. § 1026.19(e)(1)(iii)). The PATCH Defendants were required to use form H-24,
19 promulgated by the CFPB. 12 C.F.R. § 1026.37(o)(3)(i). PATCH Defendants did not make any
20 disclosures within three business days of Ms. Cary's application or at all, nor did they use form
21 H-24.
22

23 3.33 Rather than providing Beverly with standard loan terms which complied with
24 federal and state lending laws, The PATCH Defendants demanded that she re-pay the loan with
25 a percentage of her home's equity through a complex labyrinth of loan terms that no average
26 consumer and even most experienced lawyers would be able to follow and understand, let alone
27

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1 calculate the interest rate, repayment requirements, etc. The Agreement also included an initial
2 reduction in the alleged value of the Property and allowed Defendant PATCH to exclusively
3 control the process of determining the value of the Property throughout the history of the
4 transaction.

5 3.34 Based upon these violations of TILA, Ms. Cary is entitled to rescind the loan
6 and she seeks that recovery from the Court. 12 C.F.R. § 1026.23(a)(3). Simultaneous with the
7 filing of this Amended Complaint, Ms. Cary will also send a Rescission Letter as contemplated
8 by the statute.
9

10 Eighth Cause of Action
11 Violations of the Truth in Lending Act, 15 U.S.C. § 1639c(e)(3)
12 Against PATCH Defendants

13 3.35 Ms. Cary incorporates herein by reference as though fully set forth at length
14 each and every allegation and statement contained in all of the Sections above, including the
15 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.34 of
16 the Causes of Action above.

17 3.36 TILA, at 15 U.S.C. § 1639c(e)(3), prohibits the imposition of an arbitration
18 clause on any mortgage loan which is secured by the borrower's primary dwelling:

19 (e) Arbitration

20 (1) In general

21 No residential mortgage loan and no extension of credit under an open
22 end consumer credit plan secured by the principal dwelling of the
23 consumer may include terms which require arbitration or any other
24 nonjudicial procedure as the method for resolving any controversy or
settling any claims arising out of the transaction.

25

26 (3) No waiver of statutory cause of action
27

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No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the [creditor](#) relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to [section 1640 of this title](#) or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this subchapter, or any other Federal law.

15 U.S.C. § 1639c(e)(3).

3.37 The PATCH Defendants acted in collusion with Defendant Lenders Advantage chose to use that entity as the escrow agent in this transaction and allowed it to include a mandatory arbitration clause in the closing documents which sought to impose such terms on the entirety of the loan transaction, in direct contravention of federal law.

3.38 The PATCH Defendants are charged with knowing the federal and state lending laws which applied to this transaction and their intentional actions in violating all of those lending laws is evidenced in the entirety of the transaction, including the repeated assertions in the loan documents themselves that the transaction was not a loan.

3.39 The PATCH Defendants therefore violated federal law by including a mandatory arbitration agreement in the subject loan terms.

Ninth Cause of Action
Violations of the CPA Based Upon Unlawful Imposition
Of a Mandatory Arbitration Clause on Plaintiff
In Violation of Federal Law As Against
Defendant First American Title Insurance Company Lenders Advantage
And The Patch Defendants

3.40 Ms. Cary incorporates herein by reference as though fully set forth at length each and every allegation and statement contained in all of the Sections above, including the

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1 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.39 of
2 the Causes of Action above.

3 3.41 As noted above, Defendant Lenders Advantage, acting in collusion with the
4 PATCH Defendants, included an arbitration clause in the escrow documents which is designed
5 to bind Ms. Cary to mandatory arbitration in connection with the making of the subject loan, in
6 direct violation of the requirements of federal law. The Truth in Lending Act, 15 U.S.C. §
7 1639c(e) prohibits the use of a binding arbitration clause in connection with the making of a
8 residential mortgage loan when it is the borrower's principal dwelling.
9

10 3.42 Defendant Lenders Advantage is licensed as an escrow agent in the State of
11 California, as noted on its escrow documents and was required to adhere to TILA and other
12 federal lending laws under Washington law in connection with its work as an "escrow agent" in
13 Washington state. It is therefore charged with knowing the corresponding federal and state
14 lending laws which regulate the making of federally regulated mortgage loans as well as
15 knowledge of Washington escrow laws. It either has intentionally ignored TILA and federal
16 lending laws or it has chosen not to know them and to act in collusion with lenders such as the
17 PATCH Defendants to violate those laws. Either way, it violated TILA and the Washington
18 Escrow Agent Registration Act.
19

20 3.43 The PATCH Defendants also are charged with knowing federal and state
21 lending laws, which include TILA and the express prohibition on the imposition of a
22 mandatory arbitration clause. It chose to intentionally ignore this prohibition, craft loan
23 documents that disavow being a loan and colluding with Defendant Lenders Advantage to
24 impose upon Ms. Cary an unlawful mandatory arbitration clause.
25

26 3.44 The PATCH Defendants have made numerous misrepresentations about the
27

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1 terms of the contract and whether or not it is a loan, as described more completely above. In
2 addition, it further engaged in unfair and deceptive actions by choosing an escrow agent which
3 imposed upon Ms. Cary in the escrow documents a mandatory arbitration agreement which was
4 prohibited by federal law.

5 3.45 The PATCH Defendants and Defendant Lenders Advantage engaged in these
6 unfair and deceptive actions in connection with trade or commerce, the operation of their
7 respective businesses, and they had previously when they took these actions the capacity to
8 impose an unlawful arbitration agreement upon borrowers and they continue to have the
9 capacity to impose an unlawful arbitration agreement upon other borrowers at this time.

10 3.46 Ms. Cary was injured by way of the imposition of this unlawful arbitration
11 agreement because she had to retain and consult with attorneys to make certain that she did not
12 become required to participate in this unlawful arbitration agreement.

13 3.47 All of Ms. Cary's injuries and damages were caused by the PATCH Defendants
14 and Defendant Lenders Advantage and they are directly responsible for those injuries and
15 damages.

16
17
18 Tenth Cause of Action
19 Objection to Claim
20 Against PATCH Defendants

21 3.48 Ms. Cary incorporates herein by reference as though fully set forth at length
22 each and every allegation and statement contained in all of the Sections above, including the
23 Facts Statements, Paragraphs 2.1 through 2.34, inclusive, and Paragraphs 3.1 through 3.45 of
24 the Causes of Action above.

25 3.49 Incorporating the prior factual allegations and nine causes of action pled in this
26 Complaint, Defendant PATCH's proof of claim as identified in claim number 11, **Exhibit A**,
27

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1 should be disallowed as a secured claim. Any fees, accrued interest (disguised as an equity
2 interest or otherwise), should be also disallowed. Should the court disallow this claim in its
3 entirety.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff Ms. Cary prays for the following relief:

- 6
- 7 1. Judgment against all of the Defendants in an amount to be proven at trial for
8 recovery of her out of pocket damages, as well as the value of the injuries she has suffered;
- 9 2. Treble damages up to \$25,000.00 for each of Ms. Cary's categories of damage
10 and injury as provided under the CPA;
- 11 3. Any statutory damages available under federal or state lending laws, including
12 recovery of costs Ms. Cary has already paid through the escrow process;
- 13 4. An award of attorneys' fees and costs in an amount to be proven at trial;
- 14 5. Disallow Claim 11 in its entirety.
- 15 6. Quiet Title in favor of Debtor, against the PATCH Defendants;
- 16 7. Rescind the loan made by the PATCH Defendants;
- 17 8. For injunctive relief against all of the Defendants to prevent any other
18 Washington consumers from being harmed by the unlawful, unlicensed business activities of
19 all of the Defendants; and
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- 21 9. For such other and further relief as the Court deems just and proper.
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1 DATED this 4th day of March, 2022.

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